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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,815	01/07/2002	Leonard Harrison	10308B	4822

7590 05/07/2007  
SCULLY, SCOTT, MURPHY & PRESSER  
400 Garden City Plaza  
Garden City, NY 11530

EXAMINER
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EWOLDT, GERALD R

ART UNIT	PAPER NUMBER
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1644

MAIL DATE	DELIVERY MODE
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05/07/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/040,815	<b>Applicant(s)</b> HARRISON ET AL.	
	<b>Examiner</b> G. R. Ewoldt, Ph.D.	<b>Art Unit</b> 1644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 16-18,37,41 and 42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-18,37,41 and 42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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#### DETAILED ACTION

1. Applicant's amendment, remarks, and IDS submitted 2/20/07 are acknowledged.
2. Claims 16-18, 37, 41, and 42 are pending and are being acted upon.
3. In view of Applicant's amendment and remarks the previous rejections under the first paragraph of 35 U.S.C. 112 and 35 U.S.C. 102(b) have been withdrawn.
4. Applicant has claimed the benefit of priority of Australia PN 1239/95 and Australia PN 5172/95. Said benefit of priority is denied. The documents do not teach the specific assay of the instant claims, i.e., an assay employing the peptides of the instant claims. Specifically, the priority documents do not teach the use of a peptide of Claim 16 consisting of  $X_1$  and  $X_3$  consisting of 0-15 amino acids or 10 to 100 amino acids, nor the  $X_2$  of Claims 16 and 37 (note the  $n_2$  of about 10 to about 100 requirement of the peptide of the priority documents). Accordingly, the priority date of the instant application is the filing date of PCT/AU/0085, 2/20/96.

Applicant argues that PN 1239/95 teaches  $X_2$  at page 2, line 23 and page 3, line 3.

A review of the document fails to reveal the limitation of  $n_2$  being 1 (which would be required for the  $X_2$  of the priority document to be the  $X_2$  of the instant claims). It is noted that Applicant offers no support for the  $X_1$  and  $X_2$  of the claims in PN 1239/95 nor PN 5172/95.

5. The following are new grounds of rejection.
6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for

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patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or  
(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

7. Claims 16-18, 37, 41, and 42 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,509,165.

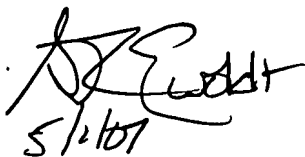
The '165 patent teaches a method of contacting T cells isolated from blood with SEQ ID NO:1 (SEQ ID NO:4 in the reference) and measuring T cell reactivity employing a proliferation assay (see particularly Column 5 line 15 - Column 4, line 32).

The reference clearly anticipates the claimed invention.

8. No claim is allowed.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Gerald Ewoldt whose telephone number is (571) 272-0843. The examiner can normally be reached Monday through Thursday from 7:30 am to 5:30 pm. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on (571) 272-0841.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.



5/1/07

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